

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

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|---------------------------|---|----------------------|
| IN RE: |) | |
| INSLAW, INC., |) | Case No. 85-00070 |
| |) | (Chapter 11) |
| Debtor. |) | |
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| INSLAW, INC., |) | |
| |) | |
| Plaintiff. |) | |
| v. |) | Adversary Proceeding |
| |) | No. 86-0069 |
| UNITED STATES OF AMERICA, |) | |
| and the UNITED STATES |) | |
| DEPARTMENT OF JUSTICE, |) | |
| |) | |
| Defendants. |) | |
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CL/IW/SS-02

THIRD SUPPLEMENTAL SUBMISSION OF INSLAW
IN SUPPORT OF ITS MOTION TO TAKE LIMITED DISCOVERY

INSLAW, Inc. has been unable to conduct discovery in its litigation against the U.S. Department of Justice ("DOJ") for almost three years. On June 27, 1988, Chief Judge Aubrey E. Robinson issued an order, sua sponte, staying further INSLAW discovery pending the outcome of the DOJ appeal of the judgments already entered by the U.S. Bankruptcy Court.

In January 1988, U.S. Bankruptcy Judge George F. Bason, Jr. ruled that DOJ officials had used "trickery, fraud and deceit" to "steal" INSLAW's proprietary PROMIS computer software and had then conspired to drive INSLAW out of business "without justification and by improper means." Judge Bason also permanently enjoined two mid-level DOJ officials,

Contracting Officer Peter Videnieks and Project Manager C. Madison Brewer, from any further involvement with INSLAW as part of their official government duties, and criticized DOJ senior management in general and former Deputy Attorney General D. Lowell Jensen in particular for repeated failure to investigate the malfeasance of Videnieks and Brewer.

The June 1988 stay order had the effect of quashing subpoenas that INSLAW had issued only 10 days earlier for the depositions of several senior DOJ career officials, including the two most senior career officials in DOJ's Criminal Division.

INSLAW had sought to depose these officials because of highly specific allegations that Mr. Ronald LeGrand, then Chief Investigator of the Senate Judiciary Committee, had conveyed to William A. and Nancy B. Hamilton, the principal owners of INSLAW, in May 1988.

According to LeGrand, a trusted source, described to the Hamiltons as a senior DOJ official with a title, had alleged that the two senior Criminal Division officials were witnesses to much greater malfeasance against INSLAW than that already found by the Bankruptcy Court, malfeasance on a much more serious scale than Watergate. LeGrand told the Hamiltons that D. Lowell Jensen did not merely fail to investigate the malfeasance of Videnieks and Brewer but instead had "engineered" the malfeasance "right from the start" so that INSLAW's software business could be made available to political friends of the Reagan/Bush Administration.

GENERAL SUBMISSIONS

In November 1989, DOJ's appeal of the Bankruptcy Court's judgment was decided in INSLAW's favor by the U.S. District Court. DOJ declined, however, to accept the appellate decision of Senior U.S. District Judge William B. Bryant, Jr., and, instead, pursued a further appeal to the U.S. Court of Appeals for the District of Columbia, where the matter is still pending.

Deprived of discovery, INSLAW conducted an investigation without having the authority of the Court to compel testimony and the production of documents. INSLAW located 30 witnesses, only one of whom DOJ had ever interviewed. In December 1989, INSLAW filed a Petition for Writ of Mandamus seeking an order to compel Attorney General Dick Thornburgh and DOJ to carry out their duty to enforce the criminal laws of the United States by conducting a full and fair investigation of the malfeasance against INSLAW already found by the Bankruptcy Court and already upheld on appeal by the District Court; and of the allegations of far more serious malfeasance made by the 30 witnesses. The District Court dismissed INSLAW's Petition in September 1990 because of the presumption that the exercise of prosecutorial discretion is generally unreviewable by the court, and because INSLAW lacked legal standing to compel a criminal investigation.

In the meantime, however, INSLAW has acquired highly specific information from credible sources that the lifeblood of the Company, i.e., its proprietary PROMIS computer software, has been pirated and implemented in U.S. Government and foreign government agencies and offices worldwide.

not only refrained from conducting its own investigation, but has also filed pleadings designed to thwart INSLAW's effort to obtain Court authority for renewed discovery on whether the Court's injunction has been violated.

In a new affidavit filed herein (Exhibit 1), Michael J. Riconosciuto casts additional light on the effort to thwart any investigation of the government's misconduct against INSLAW. Riconosciuto claims that Peter Videnieks, in February 1991, made specific threats of criminal prosecution by DOJ against Riconosciuto if Riconosciuto comes forward to testify about the INSLAW scandal before the Committee on the Judiciary of the U.S. House of Representatives.

Riconosciuto claims that while employed as the Director of Research for an intelligence-related cutout venture in Indio, California, he made modifications to the proprietary version of PROMIS to facilitate its implementation in intelligence and law enforcement agencies worldwide.

Riconosciuto states that the copy of the proprietary version of PROMIS on which he made his modifications came from the then DOJ Contracting Officer on the INSLAW contract, Peter Videnieks.

Riconosciuto claims further that Videnieks and a private sector associate by the name of Earl W. Brian frequently visited the intelligence community cutout in Indio, California, and that Brian repeatedly checked on the progress of Riconosciuto's work. Riconosciuto alleges that Brian is a

businessman with long-standing ties to the U.S. intelligence community, and that Brian spearheaded the plan for worldwide implementation of pirated copies of INSLAW's PROMIS software.

According to Riconosciuto's affidavit, the pirated copies of PROMIS in Canada are installed in its two major law enforcement and intelligence agencies, the Royal Canadian Mounted Police ("RCMP") and the Canadian Security and Intelligence Service ("CSIS"). Riconosciuto claims to have done the modifications of the proprietary version of PROMIS for these implementations in the Government of Canada.

In a second affidavit filed herein (Exhibit 2), a former Israeli Intelligence Officer, Ari Ben-Menashe, claims that Earl W. Brian and Robert McFarlane had a special relationship with the Anti-Terrorism Advisor to the Israeli Prime Minister in 1982 and, that as a consequence of that relationship, Brian and McFarlane conveyed a copy of the PROMIS software to the Government of Israel for use in its communications intelligence program. Upon information and belief, the Israeli official to whom Brian and McFarlane allegedly conveyed the PROMIS software, Mr. Rafael Eitan, was later criticized by two Israeli Government investigations for having conducted an espionage program against the United States Government during the 1980's, a program that enlisted an American citizen, Jonathan Pollard, in espionage for the State of Israel. This Court later sentenced Pollard for his espionage activity on behalf of the Government of Israel.

IN SUBMISSIONS

In the third affidavit filed herein (Exhibit 3)^{1/}, Richard Babayan, an Iranian arms dealer, recounts information about the alleged acquisition and implementation of the PROMIS software by the Governments of Libya, Iraq and South Korea; about the alleged involvement of Earl W. Brian in at least the Iraqi and South Korean acquisitions of PROMIS; about the alleged involvement in the Iraqi acquisition of former U.S. General Richard Secord; and about an alleged meeting between Earl W. Brian and Robert Gates, a senior U.S. intelligence and national security official, in Santiago, Chile. Upon information and belief, Gates is currently Deputy National Security Advisor to the President of the United States, and was Acting Director of the Central Intelligence Agency in 1988 when the meeting with Brian is alleged to have occurred.

In opposing INSLAW's motion, DOJ has imposed upon INSLAW a burden of proof that is unduly onerous and inappropriate as a matter of law for the incipient stages of this proceeding. All that INSLAW is required to prove is a prima facie case in the meaning of Fed. R. Civ. P. 8(a) -- "a short and plain statement of the claim showing that the pleader is entitled to relief." As is made clear from the context of the cases relied upon by

^{1/} At the time of filing with the Court, only a telefaxed copy of the notarized Babayan Affidavit was available to counsel. INSLAW will file the original with the Court as soon as it receives it from Mr. Babayan's counsel. Upon information and belief, Mr. Babayan worked on behalf of the U.S. Department of Justice in a highly publicized "sting" operation against local politicians in Miami, Florida, during the 1980's, and is currently awaiting trial in Palm Beach, Florida, state court on criminal charges.

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DOJ, the standard that DOJ demands would require INSLAW to produce evidence sufficient to overcome a motion for directed verdict or summary judgment, even before any discovery is taken. Indeed, the posture of this motion as a motion to take discovery itself implies that all that is needed is a statement of facts that, if proven, would justify relief. Clearly INSLAW need not prove its entitlement to judgment on the merits, as DOJ would require, to justify discovery of such complete proof.

By analogy to other civil procedures, it becomes all the more clear that INSLAW need only show facts sufficient to state a claim for relief. Had INSLAW styled its pleading instead as a separate complaint, it would be required only to satisfy the requirements of Rule 8 and/or to overcome any Rule 12 motion before discovery could proceed. Similarly, had INSLAW brought its motion as a motion for contempt, INSLAW only would have to show facts that if proved would be sufficient to constitute a contempt of court. See, e.g., C. Wright & A. Miller, Federal Practice and Procedure, Civil § 2960 at 588. To require more of INSLAW in the context of a motion for discovery in an ongoing